



**SBAITI & COMPANY**

A TEXAS PROFESSIONAL LIMITED LIABILITY COMPANY

August 19, 2022

**Via E-File**

Honorable Gregory H. Woods  
U.S. District Judge  
Southern District of New York  
500 Pearl Street  
Room 2260  
New York, NY 10007

**Re: *NexPoint Diversified Real Estate Trust v. Acis Capital Management, L.P., et al*,  
Cause No. 1:21-cv-04384-GHW, U.S. District Court, Southern District of New York**

To the Honorable Judge Woods:

We write on behalf of the Plaintiff NexPoint Diversified Real Estate Trust to advise the Court, per its opinion granting Defendants' motions to dismiss, on what Plaintiff believes is the most efficient and expedient process for resolving the issues in the Court's Order. *See* Dkt. No. 120 ("Mem. Op. & Order").

After reviewing the Court's Mem. Op. & Order on Plaintiff's federal claims and the claims against U.S. Bank N.A., and although Plaintiff respectfully disagrees with the Court's decision, Plaintiff respectfully requests that the Court (i) enter an order per the Court's Mem. Op. & Order dismissing with prejudice the claims against U.S. Bank N.A., and the federal claim under the Investment Advisers Act against Defendants Acis Capital Management, L.P., Brigade Capital Management, L.P., and Joshua Terry,<sup>1</sup> (ii) dismiss without prejudice any state law claims against Defendants Acis Capital Management, L.P., Brigade Capital Management, L.P., and Joshua

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<sup>1</sup> By yielding to the Court's determination that these claims should be dismissed with prejudice, as opposed to attempting to amend or seek reconsideration, Plaintiff does not thereby intend to waive any right to appeal the dismissal of any claim with prejudice.

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Terry,<sup>2</sup> and (iii) order as it suggested in the Mem. Op. & Order that each party is to bear its own cost of suit.

Respectfully submitted,

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

*Counsel for Plaintiff*

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<sup>2</sup> While the Mem. Op. & Order states that the Court intends to decline supplemental jurisdiction over, and “remand” the state law claims, we humbly point out that “federal tribunals lack authority to remand to the state court system an action initiated in federal court.” *Levin v. Com. Energy, Inc.*, 560 U.S. 413, 428 (2010). This case was commenced in this Court (it was not removed), and therefore, dismissal without prejudice of the state law claims that this Court has elected not to exercise supplemental jurisdiction over is appropriate. *See Cohen v. Walcott*, No. 13-cv-9181, 2017 U.S. Dist. LEXIS 97500, at \*13–14 (S.D.N.Y., June 23, 2017).